[For information on the non-secular activities of the talebs (t't'olba) or scribes as functionaries in the mosques, see Category 794.]

/61 cont./

613 One may weigh the interest of these investigations of civil
128 status, if I may venture to say it, bearing on each ikhs, its origin, its character. Their most immediate result, one will see some examples of this below, is to reveal an extreme complexity in groups presenting themselves today as units.

/62/ b) Familial archives...

• 212 A second source, no less rich and more propitious for the
613 usual methods of erudition, is offered by the family archives.
This society is enamored of the written word. It is indeed rare
[415] if each one does not save old papers, put in a "goatskin," tawulkt, or more rarely in a chest. They are rolled in volumen. One slips them into a cylindrical box made from a piece of reed. In this dry climate, preservation is almost indefinite. Still rare for the dates before the beginning of the sixteenth century, these documents become more and more frequent starting from this epoch. The great families preserve them by the thousands.
[691] Merely their inventory, drawn up at the time of legal disputes between heirs, sometimes occupies several pages. Inexhaustible contribution to research, for which they reserve the most unhoped-for windfalls. To be sure, it is protected by its difficulties of access and of deciphering. These illegible scrawls are jealously kept from the gaze of others, a fortiori from the outsider and the administrator, for they conceal, if not powers, at least an intimacy that one wants to safeguard against any hold
[195] over one. Worn and often faded writing, drawn up in a notarial language studded with barbarisms and idioms, their utilization generally requires the help of scholars of the country, alone capable of interpreting them.

Be that as it may, they constitute an inestimable source on the juridical, hence economic and social life of these olden times. From generation to generation, one can follow there the same names of ikhs and thus cross-check the traditional structure of the group. Beyond these verifications of civil status, they allow retracing quite surely the estate formation of the valley lands during the last two centuries at least. One can draw from

212 /62 cont./
613 them elements for the history of the prices. Finally, the acts of public law, which abound, notably in the heavily stocked genre of codifications, throw bright flashes on a past for the knowledge of which one was often reduced to conjecture.

The forgeries, of course, abundant. In many cases, one succeeds in revealing the deception, indeed a gross anachronism. But this suspicion is not of very great importance for our research. Because the forger, eminent stylizer and amateur interested in archaism, is himself valuable as a document.

c) Chronicle

175 A third source is that of the chronicles properly speaking. To
[173] tell the truth, one finds them only rarely among the Seksawa, and most of the native historiography is constituted there /63/ by oral traditions. But these traditions are precise, and quite often dated. One will judge them by long extracts. Nevertheless it has been possible to collect several public documents, letters from chief to chief, even annals in a certain case: the commemoration of a disaster of the Seksawa.

212 The ensemble of all these sources, morphological, annalistic,
175 and archives, forms a documentation of a precision to which the past of the Maghreb has hardly accustomed us.

Refection of the Montagnard Groups By the South

The False Autochthony

166 Montagnards, Sedentary. One cannot always banish the temptation to fix them on their rocks sub specie aeternitatis.
[829] But the first result of the analysis is that they are immigrants, and that, a more instructive fact, they have no constraint about acknowledging a foreign origin (1).

1. R. Montagne, "Aghbar ...," Hesp., 1927, pp. 1 sq., has already noted this paradoxical allogeneity. Today the fact is better explored

[Ait Lh'sen]

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by a figure or by a saint's name. But there are also locations whose ritual importance results from the fact that they are the seat of the activity of the t't'olba. They share in the prestige of this ministry at the same time as those that are linked to a certain intensity of the communal life: "permanence" constituted for the Koranic psalmody, seasonal agapae, etc. Most of the time they are mosques. Hence the complexity of meaning of such a cadre.

The distinction of these diverse categories can in fact only be schematic. In many cases, naturally, they coincide. The agrarian function, which is the most prevalent among the saints, often interferes with the juridical and municipal function, characteristic of the montagnard mosques. The t't'aleb frequently effects the liaison between these diverse places and these diverse ideas (1).

1. We shall repeatedly come back to the Chleuh /Shluh/ t't'aleb apropos law, religion, individual depassments, commune. Cf. on his subject the excellent in. /unpublished/ monograph by Charles Dominique, "Les Tolba du Sous," CHEAM, 1938.

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[776]

In a. Lh'sen, out of 34 of these rite "supports," a number undoubtedly inferior to the reality and which indicates only the most important, but a number already considerable for a collectivity of some 400 foyers, one counts only two saints with a determinate personality, 5 indeterminate but bearing a name, and 7 whose name expresses only the function: "of the river, of the col, of the law oath," etc. Some twenty others are only "mosques." Expressive ratio: it would be even more so if one added to these ritual places the still more ample mass of those which some designation, personal or not, brings into relation with the sacred by one title or another, and which survive at the very least in the toponymy.

In Iguntar, the material sign manifesting the existence of "marabouts" at Tamd'a Ugenni (which means something like a

794 /276 cont./
184 But these diverse characteristics originate at the stage of rustic exchanges between villagers and saints of grounds: and it is at this stage that they may best be analyzed.

Seasonal Rites, Collective Pacts, Individual Contracts

796 Habitat of the sacred: personal or simply communal sanctuaries. Rhythm or phases of the sacred: these periodic renewals marked by agapae, pomp, and sacrifices. Finally, accountancy of the divine: here is a very important third element, perhaps the most striking, and which impresses on the institution a cachet of specific ratiocination and avarice. And although it plunges into collective apprehension and depends narrowly on the recurrence of natural phenomena, it manifests itself under the aspects of individualism and conscience. There is something very remarkable there: the liturgical periodicity, itself linked to the agricultural periodicity, terminates in a contract.

[241] [221]

794 212 875 The old jurists from the Sous, who make themselves the echo of quarrels among hamlets for the recompense of the fqih or the repairs on the communal mosque, raised the question of the obligation of the Friday prayer in the case where several hamlets or "bicoques" /shanties/ (in the etymological sense) have together only one mosque, which is not close to any of them. The liaison of this institution with the taqbilt, which is distributed in a plurality of habitat, furnishes an interesting historical suggestion. Another characteristic that one might draw from these jurists is the liaison of the recompense of the fqih to the turns for water, that is, to sum up, to the agnatic order (1).

[634] [312] [423]

[465] 1. Ajwiba said to be from "Bennâçer," that is, from the sheik Ibn Nâçir of Tamgrût, ms. zaouia of the Mez'ud'a, p. 54, l. 7 sq. The salary of the fqih is fixed on ayyâm dawlat ᶜuyûni-him. The ar. /Arabic/ dawla, "turn," corresponds to the chl. /Shluh/ tawala. But is there derivation?

/276 cont./

794 875 212 Sometimes, on the contrary, he collects the right to a preference share from the harvest: 1/40 as in a. Lh'sen, 1/30 as in Imt'ddan, etc. /277/ Just as the dues to the saints establish, not the rudiments, but a meticulous system of fiscality, the recompense of the t't'olba, like the collection and the management of the dues, properly establishes in the group an outline of administration. That fully emerges from regular institutions, such as the periodic slaughtering of fresh meat, luzi^{c}t, itself in close relations, though not constant, with the sacrifice to the saints, tighersi. There, as we have shown elsewhere (1),

[231] [675]

1. J. Berque, "Un glossaire arabo-chleuh du Deren (XVIII^{e} siècle)," R. afr., 1950, pp. 383 sq., where these ceremonies are described in full. Bibl. of luzi^{c}t, p. 383, n. 25.

the contractual aspect, appearing in notarial technique, predominates over all the others.

794 675 [585] It is the same for the "stipulations" to the saints, chchard'. One will note the identity of this term with that designating the authorized marriage settlement to the bride over and above the amerwas. Thus there we are in full agreement. An act recorded

175 794 776 675 [796] at the sanctuary of sidi Âbderrah'man b. Messâud, in the Mtugga, illustrates the way in which the great saint of the a. Daud, sidi Sâid u Âbdennâim, founder of a "maraboutic principality" in the Sous, used it to the end of his days. He summoned the H'âh'a and the Mtugga to his bedside. After a pious homily, he requested of them the annual celebration of a mârûf at the beginning of the month of "Berbère /Berber/ March," mars ^{c}ajâmî (sic). They agreed in a great burst of contrition. And of each tribe to take it upon itself spontaneously to pay to the descendants of the saint -- that one barley, that one butter or oil. The whole was styled khidma, "service," and churût', "stipulations." That took place during the tenth century of the Hegira, that is, our sixteenth century. And although precisely this saint has no client among our Seksawa, the text applies to them equally. It indicates

1: Berque--390 Z-5 (ca.1950) 1955 MW11 Shluh MW11

/From p. 278 of the original source./

Fig. 10

Act by which the jemâa of the Iwulla took it upon themselves to pay a tithe to Sidi Ah'mad u ᶜAli, 1258 Heg. = 1840. In exchange, the saint would assure the material and spiritual prosperity of the group (in fine). Collected at the zâwiya of the Mez'ud'a.

792 /315 cont./
keeps its name: si Muh'ammad Uzinit', such is the name under which the ʿIlām registers him (1).

1. ʿAbbās b. Ibrāhīm, al-ʿIlām bi-man h'alla Marrākuch, t. V, 1939, p. 307.

And in the same region, if we go a little beyond the cadre of the Seksawa, the case is not isolated. The barbarous a. Mh'and u Musa have indeed maintained a "cadi" Ulwāh', famous doctor, [181] [693] a great one in jurisprudence (2).

2. Al-h'afīz' al-Fāsī, Riyād' al-Jinna, t. I, 1932, p. 58.

Let us pass on from phenomena of this nature, naturally more abundant in the Dir, and these moraines of zaouias and médersas that border the mountains. It is rather, in spite of the difficulty that the distance of these figures in time creates, on the side of the great jurists and great saints of the South, all coming from the most personal, the most confined corners of the Atlas, a Suktānī, a ʿAbbāsī, a Nāçirī, a Tamanārtī, tens of Samlālī, and still so many others, that it would be necessary to orient the analysis. Such an investigation of "literary history," as Renan would have said, would indeed be of interest. It could cast useful light on the cultural history of the Moroccan South, so poorly known up to now. But it is better to give it up out of qualms for precision, or rather localization.

• 212 794 More directly observable, if not more decipherable, is the t't'aleb of yesterday, today, and always. We shall again see his silhouette appear when studying the juridical structures of the milieu: there, too, his role is important. For the moment we shall interest ourselves only in his spiritual role. He has, of course, a wholly /316/ orthodox side: the periodical recitation of the Book and the "attachment," mulāzama, to the communal sanctuary. But his heterodox aspect is even greater. The psalmody of the great texts, the handling of the dangerous thing

/316 cont./

212 794 that scripture is, the more or less occult utilization of the Arabic formularies, finally a separate mode of life, in which the hands are devoid of calluses, the face pale, the arms without muscles, the body slender, the health precarious, all these traits make up for the t't'aleb a physiognomy singularly ambiguous and powerful. Let us not speak of his habits, which have nothing to do with the subject, except they sometimes constitute an additional element of segregation.

212 794 789 [688] In fact, very few of these scholars resist the temptation to utilize their power. Sale of exorcisms or making up charms, that is only the lesser evil, and this society, perhaps because it has no clergy, sees no simony in this. But there are white magic and black magic; there are especially demonology and necromancy. In common belief, the t't'aleb, after some success which he uses for the realization of his appetites, is himself victim of the forces that he has released. Like the sorcerer's apprentice, he is henceforth dominated by these forces: demons command him, and finally make him decline, leading him to a bad death or precipitating him into error. It is thus all over for those who frequent him or have had trust in him. The past, even recent, of the Sous and of the Atlas would provide many examples of these deviations. In general, they have taken the form of manifestations of fanaticism or indeed of messianism. To go back only to the last independent amghar of the Haut /Upper/ Seksawa, it was the t't'aleb-s of the Mentaga who, making demoniacal alliances glitter before him and promising him "mastery of the hour," launched him on a hopeless adventure. Many anecdotes of similar type could be reported. And certain ones even more recent.

127 Here is a document emanating from a fqih, not from the Seksawa at all, but from a closely neighboring montagnard tribe, the Ergita, document acquired on the occasion of a judicial action, autographic, and offering, from an ethnological point of view, so much interest that we shall give it here in extenso. It is a confession.

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539 /The rest of this section, except for the last three paragraphs, are in small type in the original source./ Know that I left the mosque of X... in a turmoil and extreme anxiety. That in April. I remained in this trance more than four months. One day I saw a glimmering similar to that which the moon emits before the sun. When it came up to me, I set about proclaiming my prayer. "Very good," said a voice.

[212] [794] A dream came to me in the mosque. Someone was telling me: speak to the /317/ t'olba ad-dawla. I then went to the mountains to relate my vision to the t'olba.

And he said to me, "Salvation upon the t'olba of Y." I remained there until he said, "Salvation upon you."

I then came to this spot about which the birds had spoken to me: "speak to your God at the mosque of Z..." I assented three times. Then I waited there until the approach of the Suq Tleta. It was then that a voice said to me: "Mbarek uld Brahim, leave the Tleta."

We set out with Si Ah'med ou Bihi. We found work and bastinado. We returned home.

The second Tuesday, we bought nothing at the market.

The 3rd Tuesday, I went to the market determined to accomplish this act. I then said to myself: "No," and returned to Z...

But that very night, I myself saw Him who said to me: "Why have you not executed my order?" Terrified, I awoke. My son was also terrified. I fell asleep again. My son became frightened a second time. His mother asked what it was.

I went to Si Moh'ammed N. and said to him: "What is this vision?"

A being spoke to me in the mosque and directed me to go to speak with the t'olba ad-Dawla. I then went to the mountains and told this to them (to the one in the zaouia and to another in Ichekad'en). "Last night he told me: 'Salvation upon you.' I saw a bird who called me to God. I told him 'yes.'"

[789] -- "Do you then practice thaumaturgy?"

-- "No."

/318 cont./

name, Jebrir (Gabriel), is sometimes given to children mean that the "mystery of grace," ssirr, will not cease. Holiness is again present, recognizable by its miraculous tone.

And here is one manifestation among others:

/The following paragraph is in small type in the original source./ Sidi Moh'ammed, father of the present fqih of Talmst in Nfifa, descendant of sidi Amer u H'addo, was preparing one day to take leave of me, when a violent storm broke out. I tried in vain to keep him. In spite of my insistence, he then left the house and, at the height of the storm, ascended the very exposed crest that leads to Imintanout. I accompanied him. In spite of the fury of the elements not a drop of water reached us. A zone /319/ of preservation stretched around us. How amazed I was, upon returning to the village, to learn that a veritable tornado had been raging, uprooting trees and inundating the dwellings!

There is more than "superstition" in the belief in this immunity of the saint: the narrator is an educated believer. If he were asked to explain the phenomenon, no doubt he would call upon divine intervention; similarly no doubt he would mix in ethical ideas on the saint's role and the just recompense which, through the karâmât privileges like that one, renders this recognizable to the faithful. These distinctive signs can be useful, as has been seen, in avoiding unfortunate confusions in a milieu where the ambiguous figure of the t't'aleb, participant in both an unsophisticated scientism and old esoteric traditions, assumes communication with the invisible world. The new powers hidden by the Arabic writing, in a society that is taken with it to the point of attaching all its law to it, has these risks as ransom. Classic ambivalences, and all the more dangerous, even in the eyes of the believer, as the writing is decked out in an air of piety and culture.

In this respect they open, in the old rural atmosphere, an evolution toward repudiation. The jostling of the unlettered agurram and of the scribe of furtive sapience within the same

/327 cont./
695 manner of acting in a doctoral and formal style, the very one of
121 an eminent justice.

Two Procedural Forces: The Writing...

• 212 The classic Arabic verb istaz'hara, "to produce, to manifest
691 the proofs of a law," is very often employed in the Seksawa ar-
695 chives, apropos landed-property litigations. In spite of its reassuring pedantry, I am not sure that it is not necessary to compare it with the practice that consists of reading the acts that the parties oppose on the spot of the litigation (qerri afella, "to produce against...," or factitive saghra, saqra, "to have read"). And perhaps even, at a more ancient stage, the act was purely and simply deposited upon the contested land. Hypothesis? The characteristics of efficacity not at all /328/ intellectual and mediate ("elements of proof"), but direct and concrete that the use of these titles offers naturally lead to this sort of hypothesis.

An immense red-tape flora, timidly rising from the end of the fifteenth century, already more fecund in the sixteenth century, subsequently spreads with more and more luxuriance. The Seksawa mountain is a conservatory of charters (1).

1. Cf. Et. in. /unpublished Study/ by B. de La Forcade, "Les actes en pays de coutume /Acts in countries of custom/," CHEAM, applying especially to the region of Igherm.

It happens that these old acts themselves make mention of the days of privation that a chest or leather bottle cost scholars for those
[175] salaried on the occasion of a trial. In 1193 Heg.: 1779, the a.
465 Març, on the occasion of litigation, inventoried their acts. Cost:
[794] 5 mûzûnas-s in salary to the fqih, who had spent four days of work there! ... In general, the paper is thick and narrow, of heavy
212 grain, and veritable cardboard in certain cases. Difficult deci-
695 pherment, in view of the incorrectness of the language, both

695 /328 cont./
212 pedantic and rustic, and the rudeness of the characters. To this proliferation of the writing corresponds the major judiciary role
171 that it is made to play. A comparison with the neighboring fiqh
695 /Islamic law/ will help one understand better how exorbitant this
212 role is.

In the fiqh, the act is only the materialization of the testimony (2).

2. E. Tyan, Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman /The notariate and the regime of proof by writing in the practice of Mussulman law/, 1945, p. 5.

Its link with the human word is always present in that this word both offers solemnity (cf. the chahâda, in the sense of "profession," of "attestation") and must express sincerity. The Mussulman criticism of testimony will also oscillate between the two poles of psychological verification and control of form. Law of the human word, the fiqh will have no particular respect for autographic proof any more than it will for objective inquiry. It rejects, almost like two equal idolatries, the cult of the writing and that of the facts. Between the two, it will follow an elegant road, that of formulas well regulated and not at all inclined to formalism so much as to a certain precision of tone, fixed once and for all, and subjected to the double control of the grammarian and the moralist. The motives for infirmation will consequently be the impurity of the agent and the defects of the language rather than the inadequation to the real. The content of the "allegation," al-qawl, and the authority of the "alleger," al-qâ'il, remain the principal objectives of the criticism. Therefore the system of proofs is hand and glove with the enchainment of tradition and the application of the essential norm, which is the "dominant opinion," machhûr. A remarkable unity of methods is manifest in all this. The same criticism of /329/ oral testimony presides over the imitation of the Prophet, the construction of the law, and

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[171] /329 cont./

theology. The ensemble forms an eloquent, seductive, affable, conquering whole, quite in the Arab manner.

Nothing of the sort in the Seksawa society. The acts, arraten, rrusûm, laçl, constitute there the legitimating base and the ultimate recourse of all possession. The writing bears its force in itself, as worthless, as much a "scrap of paper" as it may appear. Perhaps because it extends the force of such individual attitudes: one has seen this in the case of the istirᶜâ'. But moreover and especially because of its nature as writing. The verbal noun ara, "to write," is attested with the sense of "charm, talisman" in several dialects (1).

1. A Basset, "Six notes de linguistique berbère /Six notes on Berber linguistics/," Ann. I. E. O., t. 5, 1939-41, pp. 16 sq., denies the nevertheless tempting relation between ara, "to write," and tiuri, "curse."

[789] [875] [794] The rural scribe, t't'aleb or lfqih, still today concurrently cultivates notarial activity and magical competence, at the same time that he exercises a municipal religious function, that of imam and schoolmaster. This characteristic pluralism has lasted up to our day. It reveals a confusion fraught with lessons between different orders of things that we would readily classify in strongly contrasted categories: official cult, communal organization, education of the children, notariate, more or less clandestine practice of magic. If one adds that Arabic, language of all these [197] acts, has always kept in a certain measure the value of initiatory language and professional speech, one will measure the force that resides in these writings generously prodigalized today by the parties in the course of their litigations. Without exaggeration, one can estimate that, beyond its value as preconstituted proof, it is the act in itself that has an effect most often, ex opere operato, to speak like our Middle Ages.

The very material of the title counts at least as much as its content. In proof, sometimes, of the perfect vacuity of the latter.

/329 cont./

212 695 Such-and-such a jrîda, "list of parcels," victoriously brandished in support of a case, rests only upon the absolutely unilateral allegations of an ancestor: what belief would it merit in strict proceedings? From that, too, the frequency of falsehood. In the judicial jousting, every expedient counts. What is falsehood after all, if not a meritorious trait of craftiness, of concern to give better proof, and, finally, of intelligence in the dispute? More profoundly, if the force of a title consists on the one hand of its very material, on the other hand, of the emotional intensity that it reveals on the part of the usager or ayowant — force of the thing on one side, force of the person on the other, /330/ the distinction between false and authentic act will be only subtlety. This is indeed what, even today, the litigants as well as the judges confusedly feel.

695 212 The notion of oral testimony, on which the written act rests in fiqh, could not therefore find total application here. On the one side it is replaced, in case of conflict, by chirographic proof (1).

1. Thus decided, in 1953, apropos a case of this kind, the Tribunal coutumier /Customary Court/ of the Seksawa.

695 On the other side, it is surpassed by sworn law: plural oath among others. The "witness" is effaced before the coswearer. Here the ordeal, there the human word.

... The Oath

One knows how much the cojuratio, by its still indicated magical character, mixed with rough computations, has retained the attention of our sociologists (2).

2. Summary bibliography and discussion in J. Berque, "Les Ajwiba d'al-ᶜAbbâsî /The Ajwiba of al-ᶜAbbâsî/," R. al., 1950, under §15.

/334 cont./

695 constantly presented as a rural tolerance. Nevertheless the long
175 and harsh controversy that took place for the admission of the complementary oath imposed by the cadi on the cowitnesses of the lafīf was perhaps dominated by an obsession to avoid in this testimonial mode, acclimated in the town with difficulty, anything that would look like the rustic ordeal.

One will measure from that what might be the weight of documents, owed to the hazards of discovery, that permit conjecturing with some chance of precision the passage from one form to another. This is perhaps the case for the following act, very ancient for this society: 899 Heg.: 1494.

/The following two paragraphs are in small type in the original source./ [195] It is composed of two titles. First a habous /wakf/ foundation, which begins in a pure epigraphic style: "Let all those who will come upon this writing know that ᶜAbd al-Mu'min b. Abī Bakr u Alus assigned habous, etc." After the definition of the property by its borderers on the 4 cardinal points, and a redundant enumeration of the effects of the foundation, the act continues: ᶜalāmuᶜāyanat il-bayyīnat al-muzakkiyūn al-murd'iyūn ᶜalāl-h'ubūs wal'-h'iyāzat wa'd-duᶜā'i bi'lbarakat. That is, textually, "on the visual verification of the proof (sic): the accepted purifiers, with regard to the immobilization, to the tradition and to the invocation of the baraka, etc." These "accepted purifiers," that is, the coswearers of the closest degree (whether this degree might be kinship or contractual), are considered here as sufficiently well known for the scribe to dispense /335/ with enumerating them. Note the use of bayyīnat in this personal sense, where it covers some term of Berbère /Berber/ law. [212] Finally, no paraph, the virtue of the writing being deemed sufficient.

The second act, joined to the first, is the transposition of it in lafīf. "Astawqafa (the son of the founder) requires for the proof the ones who have witnessed (sic) the habous in his possession, and whom his father took as witnesses astachhada in the above act which he indeed told them, etc." The son has the

/335 cont./

695 175 penetrate the Sous? One points out a Kitâb ummahât al-wâthiq from Daud at-Tamulfi or at-Timfi, m. in 841 Heg.: 1438. This date indeed appears to furnish the terminus a quo, and one will observe that it precedes by some fifty years the procedural shift that our two Seksawa acts reveal. This delay of transmission between the doctrine of a scholar from the Sous, probably the initiator or the popularizer, and the notarial practice of this remote canton is quite likely.

Notarial Role of the t't'aleb

212 794 693 As for the role of the "just," ᶜadl, whom a pan-Islamic evolution has made a salaried professional, it is instructive to compare it /336/ to the one that the instrumentary t't'aleb plays in the western Haut-Atlas. Because there, too, there has been specialization, although in a completely different sense.

Certain tribes, among them the Seksawa and the tribes of the circum-Tichka in general, reserve the notarial capacity to only t't'olba attached, mulâzim, to the village mosques. Accordingly, they are endowed with the force that emanates from a collective unanimity materialized by such communitarian practices: meal of investiture, assessed compensation, etc. The wandering scholar and mendicant that this milieu likewise knows is thus kept from the notarial function, sometimes even in spite of the prestige of the person. A recent decision of the Tribunal coutumier denied any conclusive force to the paraph of an important marabout on the grounds that he was not a village imam, drawing up deeds in this village.

Near the end of the thirteenth century, a traveler depicted the inhabitants of the Sous seizing passing scholars in order to confer upon them the functions of village imam. Four centuries later, the Ajwiba of an-Nâçirî devote long passages to this institution. The adjustment that they point out between the compensation of this fqih and the order of turns for water reveals an ancient and profound correlation between the system and the very foundations of this society. It is of little importance that the personage

1: Berque--473 Z-5 (ca.1950) 1955 MW11 Shluh MW11

/336 cont./

212 794 693 is uncultivated, keeps his head bare, wears only one shirt, lets his wives devote themselves to tasks more or less decent; the Malékite /Maliki/ utilitarianism tolerates him all the same, because, without him, the village would no longer pray and would no longer enter into contracts.

These different traits will complete the encompassing of two essential motifs of the Seksawa, indeed Chleuh /Shluh/ in a larger sense, procedure: the writing and the oath, with their municipal atmosphere. At the same stroke, the beginning of historical precision, in a matter which is ordinarily so deprived of it, comes to cast some light on the relations of juridical modes, whose articulation in time one thus begins to perceive. Although narrowly limited to the field of this study, such elements merit for the ensemble of Morocco the very thing being conferred on the Moroccan South, as producer of juridical forms, an unexpected primacy.

/337/

II. Familial Law

594 191 114

Agnatic Family or Conjugal Family (1)

1. This problem is absolutely central in our investigation. Hence it can be treated only gradually in the development of the account. The notion of the agnatic group as the basis of Berbère /Berber/ society long ago passed the boundaries of the monograph. It goes back to very old observations, notably made apropos the cut-up habitat, or quarter, and such as are found, for example, in the Voyages d'Ali bey /The Travels of Ali Bey/, 1814, t. I, pp. 90, 217. Masqueray, Formation des cités chez les populations sédentaires de l'Algérie /Formation of cities among the sedentary populations of Algeria/, 1886, draws some valuable analyses from it. Ali

/349 cont./

178 archives incessantly more abundant, instincts of litigious individualism. It has driven back into the background, on the other hand, although without abolishing the force of them, these landowner bases of the family that link it by degrees to the great classificatory entities of the country. Such a rupture was serious. Generator of deeper and deeper conflicts, it will end up being fatal for the local personality. It has not yet been so for the Seksawa family, at least where no external factor has come, as in a. Âbdella, to make the forces of breakup prevail.

212 671 198 [538] But everything has become a notarial affair. The village t't'aleb, with functions quite laden with communal virtue, it is true, has become the artisan and, in certain respects, the arbiter of the juridical permanence of the group. The continuity of the latter in time has certainly lost in part original modes of expression such as — one can at least imagine it — the heroic legend or choral poetry. It is no longer expressed except under the abstract schemata of the act, of the formulary. But it has brought to it its competitive fervor and its sense of olden times. To the point that these acts have proliferated immensely, the mountains have become a library of charters, and all this literature has even known there a historical density inconceivable in the Morocco of the plains, or the so-called cities of written law.

613 671 How distorting a mode of expression! Of itself it caused the essential to escape. By law of genre, it transposed and mutilated what it allowed to pass. Of the two faces of the familial law, the one that concerns the group and the land, on the one hand, the one that concerns the contentious individuals, on the other hand, only the second could thus show through, and yet at the price of stylizations. However that may be, and with these reservations, such archives can restore, across several centuries, the permanence of families. It is thus that the name of the principal ikhs-s and their disposition, still present, appear throughout the last four centuries in the acts called inçâf, "repressive tariffication," but in which we can already observe that they express a right, not gentilitial, but communal.

613 671 198

/366 cont./

794 428 671 decide the litigation from a point on the whole secondary, like a feint in a joust.

That is a new chance opened up to the adversaries of the habous, a new possibility of play, anything but negligible in the spirit of the system. But what accumulated risks! The landed-property procedure of the Seksawa recalls the shows in which a [423] player must guide his ball through a multitude of snares and traps to a very chancy issue. This issue, in the case at hand, is the alienation of the land. And although it results from possibilities opened up by the orthodox law, which one professes /367/ to follow, and by the very form of juridical expression, one divines at what point it remains improbable, and doubtful even in success.

General View of the Familial and Landed-Property Law

121 If one now groups the most striking aspects of the system, one will realize that it is the triumph of Homo oeconomicus. Of the rite and the tool, to return to the two antithetical notions from which, for a Moroccan society moreover very different, Azemmour, the late Ch. Le Coeur drew his inspiration, it is by far the second that occupies the foreground here. One might even say the tool in the proper sense: namely, the peasant's hoe, this agelzim that sculpts the tiers, distributes the water, inscribes, in gains of a few square meters, the patient work of generations, fashions this rural landscape, which is the most made that North Africa knows. Workman's landscape...

121 671 But this impression is modified somewhat if one leaves the domain of the law that is conscious, avowed, marked by its successoral schematism, its litigious tricks concerning goods, its ratiocinations concerning household life, in order to examine its relations with the agrarian order. At this level a ceremonial commentary, a sentimental context envelop words and gestures. Agnatic solidarity appears as one of the active bases of the life 121 of the canton. But what remains of this structure once past the 671 threshold of judiciary debate, which is also the threshold of the 212

/367 cont./

121 671 212 writing? Truthfully, few things. An entire gentilitial culture seems to have been jeopardized here. The writing has gone that way. Writing of another language, minority, professional, tending to be secret. It carried with it a sentimental pedantry, a doctrinal propaganda, and a notarial technique. It did not remain a means, but became a master. The whole matter of successoral law was profoundly transformed by it. Matrimonial law resisted better. It in fact kept, thoroughly colored by rite, a stronger originality than the former, which imperious acquisitive instincts dominate. The intensity of emotion, moreover, was not the same in the two domains. Paroxysm of the moment in the one, continuity in the other. Resistance had to be unequal. Festivity on the one side, duration on the other. The notarial language, powerless to deform the festivity, tyrannously lent itself to long peasant perseverances. It governed the secular courses of them.

121 671 [423] But on this side of the stage of expression, the communal peace was strongly maintained, or re-established underneath, in the order /368/ of irrigation, the parcellary orchestration. One thus arrives at the paradox that the land economy, controlled above all by prelaw survivals, unconscious imperatives, but perhaps also by deliberate initiative of the group, is expressed only indirectly in the contentious multiplicity of the title. The essential of this life: agonistic vehemence, tension with alternating re-establishments, patrimonial continuity, sentiment of the legitimacy, passes through the acts rather than being expressed by them. Juridical subterfuge, procedural stratagems, an element of surprise and something like a certain cult of the absurd menace the constructions of the writing. And that indeed provokes disturbances, arouses many scruples. But they remain in profundity. The notarial language has covered everything. Its mysterious prestige and its malices have beguiled both the coolness and the duplicity of this peasant. For this peasant has found his boon there. More and more he will find it there, as by a sort of compensation, and to the extent that the judicial debate casts off its antique character. The reaction of the group will not always succeed in winning out over the forces of breakup. Then it will all be over for the montagnard institution.

634 /376 cont./
554 a void, or out of a sort of revenge against the event — so consid-
erable is the role of the fiction in these societies. The fact is
634 that this genre of writings is manifested up to our arrival. Who
671 knows whether the multiplicity of clauses was not sought after as
a guarantee against an invading arbitrariness? Certainly, the
guarantee is /377/ more or less efficacious. Not only can tyran-
nical power henceforth infringe upon these deliberations, but there
is something even more serious. The new magistery is based on a
new political morality. The automatism that the commune
looked for in the application of punishment gives way to a discre-
tionary valuation, which it would be false to say is constantly
iniquitous. It would not be maintained in such a milieu without
the support of legitimacy. But another legitimacy. Codification
henceforth collides against the nuances and contingency of a
praetorian jurisdiction, which undoubtedly does not fail to invoke
religion, reason, and good sense against its rival. The transition is ac-
companied, among many justiciables, by a feeling of liberation
with respect to old constraints of the group, of immediate and
pitiless effect. A new faculty of instance, of remise for cause, of
individual proceedings and recourse opens where hitherto only the
strict communal mechanism tried to govern. Such authentic in-
stincts of the milieu doubtlessly obtain satisfaction. In one sense
the amghar carries with him a faculty of deliverance: it is the
very one of anarchical destruction, but also, in a sense, that of
enlightenment and individualism. One is poorly equipped to de-
scribe with precision the play of factors whose alternating victories
have undoubtedly filled several centuries, and not only the nine-
teenth. It will suffice here to have extricated the character of it.

175 In 1132 Heg.: 1720 a fqih originally from the Arghen, the
634 tribe of Ibn Toumert, rises to interesting distinctions, which show
554 to what work of the intellect, and critical intellect, the institu-
[212] tion could give rise. "Among these rural people," he says, "the
[794] jemâ^{c}a and the moqaddem play the role of sultan in regulatory
affairs (aḥ'kâm). The moqaddem is the imâm. If they agree to
[681] compose (sâmah'a) or levy a fine (inçâf), they divide the fine,
and the portion of the one and the other is evident. If they

/380 cont./

The Wording of the Rule

000 Made from harsh internal competitions, from inexpiable vendettas, the group nonetheless presents to the exterior a cohesion which is that of a fagot of thorns, inextricable and untouchable. And is it not significant that this image of a fagot was inspired in the Middle Ages by our first communes?

671 This thorny cohesion is sealed by a juridical act. It is these
171 penal codifications called qānūn in Kabylia and inçaf among our Chleuhs /Shluh/, veritable commonplace of the Berbère /Berber/ institution. Revealed by Hanoteau and Letourneux, found, with what profusion! in the Moroccan South, producing in Algeria around 1930 a scandal of surprise of an indeed sympathetic naïveté, their history is already long (1).

1. L. Milliot, "Les institutions kabyles /Kabyle institutions/," R. E. I., 1932, pp. 138 sq., and "Les qānouns kabyles /The Kabyle qānouns/," in the work by Hanoteau and Letourneux, pp. 1 sq., 26 sq., ibid., 1933, remarkable historical critique of the documents provided by these two authors.

One can follow the chain from the edict, already mentioned, of Yah'yā u Tāfūft (1510) up to the deliberation submitted to the prefect, in the cadre of our municipal law, by a Kabyle village in 1945.

671 It is probable that they represent one of the first uses of
• 212 Arabic writing in the Sous. The synonymy of chl. /Shluh/ ikchchuden, ar. /Arabic/ alwāh', "tablets," "tables of the Law" (2).

2. The jurists of the Sous often speak of these "tables," alwāh', which corresponds to chl. /Shluh/ ikchchuden, "bits of wood,"

/380 cont./

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/footnote 2 continued/ to which the customary codifications are consigned. The latter come to be designated under the name of "tables," without further allusion to the material of the instrument. Nevertheless this institution must be compared with the practice of the tabulae defixionis, in rites of spells in which the planchette, often covered with characters and wrapped in a shroud, is slipped into an old tomb.

[784] [789]

The society that we are describing here knows only paper for what concerns the juridical acts.

[824]

The geographical area of the acts on wood (probably pistachio wood, igg) seems to have for its center the tribe of the Ilalen. In the Ilalen of the East approximately half of the acts are drawn up on wood, the other half being drawn up on paper. In the tribe of the Ilalen of the West the proportion of the acts on wood /this footnote is continued on the following page in the original source/ seems to be a little smaller. In the limitrophe tribes one finds a variable proportion of acts on wood, but still very strong in the region of Timgilcht (Tafrawt) and Idaw Kensus (Igherm). In the Ammeln, for example, few acts on wood. They are no longer found, to my knowledge, at Anzi, Ifran, Bu Izakarn, or in the Haut Atlas, where paper has been generalized since the sixteenth century. The proportion of acts on wood seems hardly to have varied since an ancient period and to have remained fairly constant up to the establishment of the Tribunaux coutumiers.

is /381/ attested by all the old jurists of the South, who devote

/381 cont./
671 many dissertations to it (1).
212

1. For example, as-Suktânî, Ajwiba, ms. Ud ᶜAbd al-Mawlâ, pp. 139 b and 140 b (Deren).

It was undoubtedly under this aspect that the problem of the native law, outside the fiqh, was posed for them. One can thus suppose at the beginning of the sixteenth century, at the probable epoch of the generalization of the notariate in our mountains, a parallel generalization of these codifications. The very name of these elaborations — even if they replaced something older and of which we shall never have any idea, save for the chance of a lucky find — is strictly Arabic. It is the very word, designating this "equity," that our jurists sometimes oppose to the norms
671 properly speaking among the sources of the judgment. Inçaf is a
212 religious word, with moral sonority. If a semantic extension
779 makes it mean "fine," then "penal tariffication," the fiction of an arbitration of the viri prudentes authorizes the transition from one notion to the other. A continuity without rupture is thus established from the orthodox thought and from its paradoxical particulars to the illicitness of purely laic legislations and certain of which, horrors! deal with personal status.

This is what the writers indeed felt, this is what they have always held. Even if one makes allowances for the professional scruples of the scribes, pious men with devout affectation, with sanctimonious words, this characteristic is found even in the con-
175 tent of these charters. Effort at attachment to orthodoxy! A text
685 of 1142 Heg.: 1730 assimilates the compensatory tariff for rob-
671 bery, practiced in Seksawa, with the canonical penalty of ampu-
779 tation of the hand: in fact, says our doctor, 33 onces were the value of a hand during the period of the Companions! Every time that it can be done, erudite qutoations come to legitimate the
175 foreign communal law. A similar act of 1147 Heg.: 1735,
683 emanating from the "cadi" sidi Moh'ammed, son of the saint of
671 Assttif, strangely joins a quotation from Khalîl to some
779

/386 cont./

776 Mediterranean foundation. Thus perhaps here this Amer u H'ad-
177 dō, magician-king according to the Arab chronicle, eponym of the highest valley. The agellid-s of the fourteenth century were perhaps the first great adapters. But they are buried in an indiscernable past.

The Age of the System

671 It is thus better to hold fast to a patent fact: that the Sek-
779 sawa system realizes a transactional equilibrium with Islam, and
182 undoubtedly in large part conscious.

Great sections of fiqh exist intact here and can easily be recognized: use of Arabic writing and orthodox notarial forms. Clear conviction of the user that he is drawing inspiration from the one and the other norm, the indigenous and the oriental, the former gaining through local conditionings, the latter in the /387/ ethical choice. So many traits that would make one think of a profound adulteration of the system. And although composite is not the synonym of backward, the impression would be that one is dealing, in the Chleuh /Shluh/ law, with a bastard and derived phenomenon. But here is the opposite side.

Invasion by the fiqh, certainly. But delimited, elaborated [212] in a personal ensemble. Adoption of writing, certainly, but with the benefit of local prestiges. Assimilation, certainly, but balanced, circumscribed, desired, and sometimes even, one would say, simulated. Would this law then be a very old system able to safeguard, under wise adaptations, its original legacy? Similarly, what is to be concluded concerning its morcellation? It presents itself today divided into minuscule personalities of cantons and ravines according to a compartmentalization that, remarkably enough, does not always coincide with that of the ways of speaking. But does that imply youth or decadence? At the very least the existence of a Chleuh /Shluh/ juridical koïnè, entirely coherent and thoughtful, although broken up into a thousand varieties, postulates a maturity favorable to the

1: Berque--660 Z-5 (ca. 1950) 1955 MW11 Shluh MW11

Pl. XIII

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The a. Lh'sen high country

[798] The two valleys of Wanz'id' and Iwulla are separated by the relief of the Ameznir. The important sanctuary of Sidi Musa is found in the rocky mole at the base of the Ameznir. Contrast between the deep valleys and spacious planes that reach about 2,000 meters. In the bottom the tabular limestones of the Dwiran, which bound the Seksawa country on the west.

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217
789

Predictions collected at Tasa, in the archives of the amghar Ah'med .. Umulid. Chleuh /Shluh/ text, in prophetic style.

1: Berque--661 Z-5 (ca.1950) 1955 MW11 Shluh MW11

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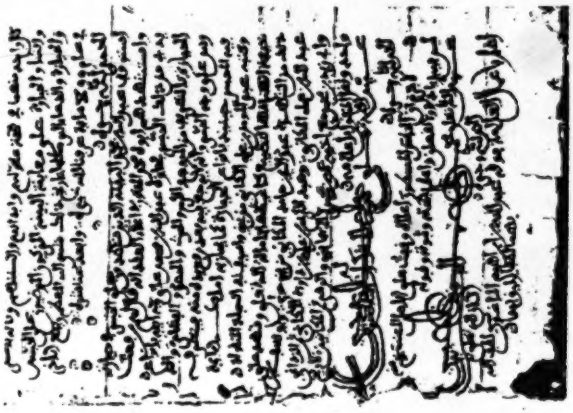
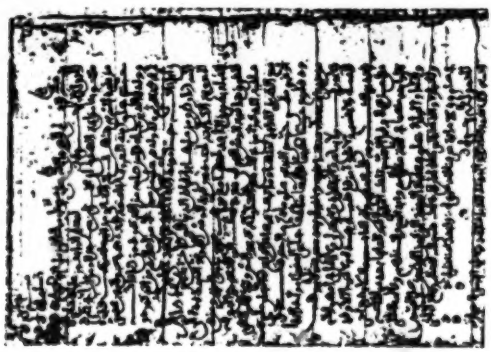
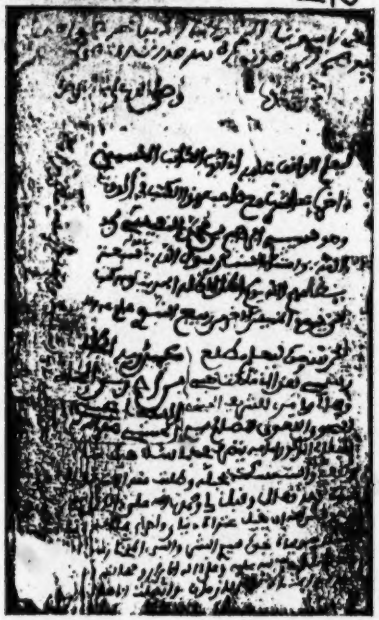
695





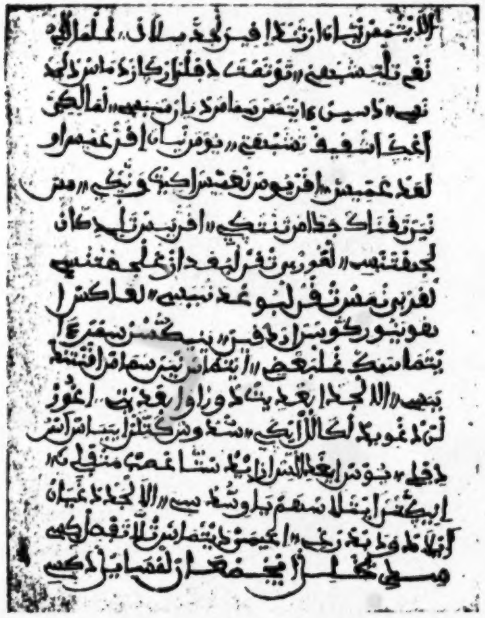
From the plural oath to the notarial act, "laffif"
Act of 899 Heg. = 1494, collected in Idaw Geryun

Pl. XV



212
791

Act of devotion from a disciple to his sheik, dating from 1194 Heg. 1780, made at the zâwîya of Takerkuzt, and collected on the margin of a book of the zâwîya of the Mez'ud'a.



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671

Juridical text of the Awzal genre

The first line reads: wala aytma-sn-yan ur ten-d iqqin ljad silad gh-lmalikiyya, "no longer that the brothers of someone are excluded (from his succession) by (the existence of) the ancestor except in Malékism."

/51 cont./

789 deliver to men their treasures hidden in the ground and their prodigious riches (1).

[113]

1. Doutté, Magie et religion dans l'Afrique du Nord /Magic and Religion in North Africa/, Algiers, 1909, pp. 220-306.

789 In this way magic allows itself to be penetrated little by
791 little by religious influences. Consequently it can be said, if one excepts a few practices whose importance is manifest especially in domestic and family life, that in the Sous the cloak of Islam almost completely covers the survivals from the time of "jahiliya" -- of pagan ignorance. There is no ceremony, [782] initiation, rejoicing, war council, peace treaty, discussion for the choice of a leader which does not begin and end with an invocation to God, to his Prophet, and to one of the two great saints of the Sous: Moulay Brahim of the Kik, on the frontier of the North of Berbère /Berber/ country, and Sidi Ahmed ou Mousa of the Tazerwalt, patron of travelers and head of the family of the kings of the Gezzoula.

197 XII. The intellectual life. -- Islamization did not entail the decline of the Berbère /Berber/ language, whose vitality does not cease to manifest itself and which continues to express the particular genius of the inhabitants of the Sous. The Arab tribes themselves, settled in the central valley, understand the speech of the montagnards, and the small groups of the descendants of the Ma^{c}qil of the Sahara, who come to settle in the plain of the Chtouka and the Haha, soon forget their Bedouin dialect in order to adopt the one of the country. Arabic, however, is understood by the traders, the agents of the Makhzen /makhzan/, and all those, whose number is increasing today, whom temporary emigration /52/ carries into the tribes and towns of the Gharb /Rharb/. [554] But it is not rare still to find old scholars, of repute in the know- [212] ledge of religion and law, who read the language of the Koran

/52 cont./

197 easily and yet, for expressing themselves, are incapable of using
[554] the Arab ways of speaking employed in all the rest of the Empire
[212] by the true subjects of the Sultan.

Moreover, the struggle goes on without truce between the two languages, Arabic and Berbère /Berber/. In that duel the former presents the advantage of being the vehicle of a universal civilization and of lending itself to the expression of religious or political thought. The latter holds so closely to the popular spirit and by such strong ties that long centuries have not yet been able to succeed in destroying it.

It is necessary to ask the study of this Berbère /Berber/ language, still so alive in the Sous, to make us acquainted with the essential aspects of the humble primitive civilization of the tribes. Thus the archaism of the grammatical forms suggests to linguists valuable comparisons with the state of the Indo-European languages in the most remote times that we can reach and bears witness to the obstinate spirit of conservatism and tradition that the study of the rites and beliefs also makes so evident. The
[192] incapacity for abstraction is shown by the use of a concrete vocabulary even in expressing feelings. Thus courage is expressed by "tasa" (the liver), warlike ambition by "ifadden" (the knees) (1).

1. The knees are used by the horseman to keep himself in the saddle; the leader is compared to the horseman, the subject tribe to the horse.

192 At the same time, the aptitude, so characteristic of Berbérie /Barbary/, for borrowing from foreign civilizations is manifest in the introduction of the newest words: mandate, bank, automobile have already taken their places in the vocabulary of the Chleuhs /Shluh/.

538 Finally, nothing gives the measure of the virtues and faults of the race better than the art of the poets and storytellers. Incapable of singing epics, whose composition would go beyond their

/219 cont./

632 621 [592] When the "mouda^{c}" made up of several hamlets is an active social unit, as happens in most of the valleys of the Haut-Atlas /High Atlas/, the heads of all the households in the hamlets that constitute it deliberate jointly in order to regulate the details of life. But if, according to common practice, the assembly [554] [613] is open to all the men married for a year, only the respected representatives of families, the heads of the "ikhs," make decisions in the name of all.

623 [346] The meetings of the council of the "mouda^{c}," to which the name "jema^{c}t" is often given, are customarily held in the Friday mosque, which is the central institution, and perhaps this social group's reason for being. The turn for feeding the taleb -- a [212] [755] hired outsider who instructs the children in the reading of the Koran, drafts letters or legal documents, and furnishes amulets [358] [574] to cure illnesses -- maintenance of the house of prayer, systematic regulation of the hospitality owed to strangers who come to spend the night in the mosque usually built apart from the village, such are the little practical problems that the assembly must solve in the best interests of all. The "jema^{c}t" augments its activity [185] by watching over the protection of the crops, fixing the successive periods of utilization of the forest of argan trees for [241] [245] pasture or the harvest of the berries; it also sets the time when one can begin the plowing or the harvesting of walnuts (1). [624]

[778] [787] 1. For magical reasons, it is often prohibited by the jema^{c}t to plow before a family that possesses "baraka" has found that circumstances are favorable for beginning the work. Cf. Laoust, Mots et Choses berbères /Berber Words and Things/, pp. 313-315. For other reasons, [423] the harvest of walnuts or olives, which is done on trees belonging in common to a large number of owners, could be done only in the presence of the entire group, and it, too, is regulated by the council.

*634 /323 cont./
554 of the legends has flown; the government of men has become a
178 serious and positive thing, and the montagnards well know that
791 for them the Iron Age has come.

792 Moreover, shorfa /shurfa/ and marabouts have diverted to
791 their advantage the current of popular forces that willingly
554 carries to the top rank the personages capable of entering into
178 relations with the hidden universe. Islam has obtained what it
[212] could utilize of the old beliefs; in our day it is the tolba, the
[796] scholars, the saints, the descendants of the prophet, and not the
*634 amghars, who know the fearsome secrets and possess a mysterious
175 power. The true successors to the magician-kings -- if they have
791 ever existed /324/ in Berbère /Berber/ country -- would be,
792 rather, in the Moroccan South, the sons of Sidi Ahmed ou Mousa,
554 who for a long time exercised command of the tribes of the Igez-
zoulen, whose astonishing power Saugnier described at the end of the eighteenth century in these terms:

"This man without troops at his orders," says he of the sherif of the Tazerwalt, "is nevertheless the most powerful in all Africa; his authority is limitless. If he orders war against the Emperor of Morocco, he is obeyed; the war ceases when he wishes. Without
[431] private possessions, he has all in his power. Each family gives him a present every year; they exert themselves in the desire to make it considerable. He renders justice to everyone; he submits
[692] the accusations to his council and, some days later, definitively pronounces a verdict: he requires nothing of anybody, and everybody gives to him" (1).

[113] 1. Relation des voyages de Saugnier /Account of Saugnier's Travels/, pp. 119, 120.

In the nineteenth century, up to the end of the reign of Moulay el Hasan, Sidi Hicham and his son kept this tradition. Inheritors of the royal power established by Sidi ʿAli, they preserved strange customs in their fortress of Illigh. Such a one is
[224] that celebrated hunt each Saturday by the sherif, who, to please
[541] God, must kill the greatest possible number of wild animals; the